IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

Crl.Rev.Pet.No. 4360 of 2006

Crl.M.P.No. 3038/2006 OF SESSIONS COURT, PALAKKAD.
Crl.M.C.No. 3961/2005 OF SESSIONS COURT, PALAKKAD.

REVN. PETITIONER:

SHYAM, S/O. SASI,
AGED 21, PALLIKKARA VEEDU, OZHAGATTUKARA.

BY ADV. SRI. S. SREEKUMAR

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.R.P. No. 4360 OF 2006

Dated this the 12th day of December, 2006

O R D E R

This revision petition is filed challenging the order of the learned Sessions Judge cancelling the bail granted to the petitioner on an application filed by the Circle Inspector of Police, Alathur.

2. The petitioner is the 10th accused in the crime. He was granted bail as per order dated 21.11.2005 in Crl. M.C. No. 3961/2005. The offences alleged against him are under Sections 143, 147, 148, 120(b) and 302 of Indian Penal Code read with Section 149 of I.P.C. The bail was granted on condition that the petitioner shall report before the Investigating Officer on all Mondays and Thursdays between 10 a.m and 1 p.m till final report is filed or for six months whichever is later. According to the Investigating Officer, the petitioner failed to comply with the said condition. The court below found that some of the accused have criminal antecedents. They were granted bail only after the expiry of 90 days, since charge sheet was not filed.

3. The fact that the revision petitioner did not report before the Investigating Officer after six months is not under dispute. The court below, on considering the gravity of the crime committed, was inclined

to accept the submissions of the Investigating Officer and since the accused violated the conditions, bail granted was cancelled. The lower court also observed that, according to the Investigating Officer, the accused who are on bail are having contact with the accused who have secured bail and if they are allowed to remain free, it is not possible to complete the investigation.

4. Learned Public Prosecutor also submitted that, accused 8 and 9 are at large. They could not be arrested so far since the petitioner has contact with them. On going through the impugned order, it appears that the only reason shown by the court below to cancel the bail is the gravity of the crime committed and violation of condition of bail. There is no dispute that no other offence is committed than which was stated originally in the F.I.R. The offences which the court took cognizance of at the time of granting bail remain the same. No other offence is now alleged to have been committed by the petitioner. Hence, having granted bail once, gravity of crime cannot alone be taken as a ground to cancel the bail at a latest stage, unless any other offence of greater gravity is allegedly committed by the accused.

5. So also, the mere violation of a condition in the bail order is also not a ground to cancel the bail. The condition must have been deliberately violated and there must be some willful act on the part of

the accused to suffer the consequences of the harsh order of cancellation of bail. It is only if a person, for some reason or with some deliberate intention, willfully infringes the order or condition in the bail order, he should be visited with such penal consequences of cancellation of bail. The liberty of a citizen is not to be meddled up, unless there are strong reason to do so.

6. The Supreme Court in several decisions have laid down that an order of cancellation of bail has to be passed after considering various facts and circumstances and only if the court finds that there are very cogent and overwhelming circumstances, the court shall not cancel the bail. The submission made by the learned Public Prosecutor that the cancellation of bail is required, since it is not possible for the Investigating Officer to arrest the co-accused is also insufficient to cancel the bail granted to an accused.

7. There is nothing to show that the accused has committed anything adverse in the interest of the investigation while he was on bail. Learned counsel appearing for the petitioner submitted that, the accused committed a mistake in noting the expression used in the order particularly the condition imposed by which he is bound to report before the Investigating Officer either till final report is filed or for six months whichever is later. The accused reported before the

Investigating Officer only for six months. The accused did not report because he was under the impression that he need not report after six months. It is only a bonafide mistake. Learned counsel appearing for the petitioner also brought to my notice that as per order dated 30.11.2006 in Crl. M.C. 3834/2006, this Court granted bail to accused 4, 6 and 7 who suffered the same type of cancellation of order of bail. It is also submitted by learned Public Prosecutor that the accused is not involved in any other offence.

In the result, the order under challenge is set aside, reviving the bail order which is already passed in favour of petitioner. The petitioner shall, therefore, be released from custody forthwith. Registry shall forthwith issue release memo to the jail authorities concerned accordingly.

This petition is allowed.

K. HEMA, JUDGE.

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